

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)	CASE NO. 1:10CR384
)	
Plaintiff,)	JUDGE SARA LIOI
)	
vs.)	
)	DEFENDANT’S RESPONSE TO THE
FRANK RUSSO,)	UNITED STATES’ MEMORANDUM
)	REGARDING RULE 35 HEARING
)	
Defendant.)	

Now comes Frank Russo, by and through undersigned counsel and respectfully submits his Response to the *United States’ Memorandum Regarding Rule 35 Hearing*. For the reasons set forth in the attached Memorandum, Mr. Russo respectfully submits that a six-level substantial assistance reduction is warranted in this matter.

Respectfully Submitted,

s/ Roger M. Synenberg
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MEMORANDUM IN SUPPORT

The Government concedes that Mr. Russo provided substantial assistance. Yet it claims that the value of Mr. Russo's assistance was diminished by what it characterizes as an "eleventh hour" decision to cooperate. The Government claims that despite all of the schemes uncovered, and all of the convictions it obtained with the assistance of Mr. Russo, his cooperation is deserving of only a three-level substantial assistance reduction. Not only does the Government's position unreasonably undervalue Mr. Russo's assistance, but it is inconsistent with the substantial assistance reductions it has proposed for other defendants. Moreover, it is based on incongruous comparisons to other defendants whose assistance does not compare to Mr. Russo's extraordinary assistance.

The timing of Mr. Russo's cooperation perhaps would be significant if it had limited him to providing information only about schemes he was involved in, or if it only allowed him to provide helpful information about a handful of other schemes, or if it limited the number of trials in which he could testify, or if he had been untruthful. Nothing of the sort occurred here. Rather, in addition to the fact that he waived an indictment, filed no pretrial motions and forewent discovery, Mr. Russo:

- provided information that led to the guilty pleas of 11 defendants;
- testified in the trials of 4 defendants, all of whom were convicted;
- provided information that caused the Government to renegotiate Ronald Romanini's plea agreement and obtain an increased sentence;
- provided information that caused the Government to not offer a 5K1.1 substantial assistance reduction for Joseph O'Malley;
- provided truthful information throughout his cooperation;

- spent hundreds of hours reviewing evidence and meeting with government agents; and
- cooperated with the Government despite a threat on his life and fear for the safety of his family.

The Government's position that Mr. Russo's assistance is deserving of only a three-level reduction unreasonably undervalues the breadth and quality of his assistance.

The Government's position is also inconsistent with substantial assistance reductions it has recommended for other defendants. Defendants for whom the Government offered three-level reductions did not provide nearly as much assistance as Mr. Russo. And, unlike Mr. Russo, those defendants did in fact wait until the eleventh hour to cooperate. For instance, defendants Samir Mohammad and Hamdi "Sam" Qasem did not plead guilty until the day before trial. Before their guilty pleas, the Government was required to file 15 responses to pretrial motions filed by these defendants. Yet, Mr. Mohammad and Mr. Qasem each received three-level substantial assistance reductions. The Government's claim that Mr. Russo's assistance should be valued the same as these defendants who waited until the eve of trial to plead guilty, and who offered substantially less assistance than Mr. Russo, is unreasonable.

To justify its position that Mr. Russo should receive no more than a three-level substantial assistance reduction, the Government unsuccessfully attempts to contrast Mr. Russo's assistance with the assistance of other defendants who received four-level reductions. It cites to defendants Santina Klimkowski, Bruce Zaccagnini and Timothy Armstrong, who offered assistance regarding the VAS scheme. The Government claims that each of these defendants received a four-level reduction because they cooperated early. However, Mr. Russo's assistance far exceeds the value of the cooperation provided by these defendants.

In addition to the fact that Armstrong, Zaccagnini and Klimkowski did not begin to cooperate until almost a year after the search warrants were executed on the Cuyahoga County Administration building, Zaccagnini and Armstrong provided information about only one scheme—one in which they were involved. Furthermore, while Klimkowski reportedly provided information on several schemes, albeit most of which she was involved in, in stark contrast to the truthful assistance from Mr. Russo, Klimkowski lied to investigators during her “cooperation.” Her lying caused the government to have to restart its investigation into everything she had proffered—this time questioning everything she shared. As a result, the Government charged her with, and she pleaded guilty to, an additional false statement offense. The assistance of these defendants does not support the Government’s justification for recommending a three-level reduction for Mr. Russo because of the “untimeliness” of his proffers.

The Government also attempts to diminish Mr. Russo’s assistance through comparison to Defendant John Carroll, claiming that he received a four-level reduction based on the timeliness of his cooperation. What the Government fails to acknowledge, however, is the fact that like Klimkowski, Carroll repeatedly lied to investigators for months while he was supposed to be assisting them. Mr. Carroll’s untruthfulness was so significant to the Government’s investigation that it recommended a two-level enhancement for obstruction of justice. How the Government now claims that Mr. Carroll’s assistance was more valuable or timelier than Mr. Russo’s entirely truthful cooperation is confounding. Carroll’s deception complicated, not helped, the Government’s investigation, costing them months of lost time and lost opportunities.

The Government’s reliance on Klimkowski and Carroll in support of its proffer of a three-level reduction for Mr. Russo belies the infirmity of its position. Regardless of the date these defendants promised to cooperate, the value of their assistance was clearly diminished by

their obstruction--so much so that the Government either charged them with additional crimes (Klimkowski) or argued for a sentencing enhancement for their lies (Carroll). Unlike these defendants, Mr. Russo provided truthful information throughout the entirety of his cooperation. It cannot be credibly argued that Mr. Russo's truthful and comprehensive assistance is less valuable or less timely than that of Klimkowski and Carroll.

The Government additionally points to Nilesh Patel and Dinesh Banfa as examples of early cooperators who it believes deserved a four-level reduction. However, the value of Mr. Russo's assistance greatly surpasses the assistance of Patel and Banfa. Patel provided information only relating to a scheme in which he was involved and testified in one trial. Banfa did not testify in any trials. In fact, ten defendants received four-level substantial assistance reductions in this matter without any requirement to testify. By contrast, Mr. Russo testified against four defendants who proceeded to trial, all of whom were convicted. The Government's assertion that Patel and Banfa, who offered significantly less assistance than Mr. Russo, are entitled to a greater substantial assistance reduction based on timing alone, should be dismissed.

Further undermining the Government's position is that it has recommended a four-level substantial assistance reduction for defendants whose assistance was *less timely* than Mr. Russo's. Charles Edwards, who was indicted, but later agreed to cooperate against his co-defendant, received a four-level substantial assistance reduction upon the request of the Government. Moreover, Ronald Romanini, who lied to the Government for two years, also received a four-level substantial assistance reduction. It is respectfully submitted that Mr. Russo, who waived indictment, provided valuable information on multiple defendants, and was always truthful, should be given greater consideration than these defendants.

The Government additionally claims that Kevin Kelley is the only defendant deserving of a six-level reduction because he was the first cooperator in the investigation. However, this position fails to recognize the practical effect that a six-level reduction will have on Mr. Russo's sentence. With a six-level reduction, Mr. Kelley received a sentence of only 72 months. If Mr. Russo receives a six-level reduction, his total offense level will be a 33, and he will still have the second longest sentence in the county corruption probe. A six-level substantial assistance reduction appropriately values Mr. Russo's extensive cooperation, and will result in a sentence that is proportionate to the sentences of the other defendants in this matter.

While the Government's evaluation of a defendant's assistance should be given deference, that deference should end where the Government, as it does here, unreasonably diminishes the value of a defendant's cooperation. Given the Government's concession that Mr. Russo did in fact render substantial assistance, this Court is granted "ample discretion" to accept or reject the Government's recommendation. *U.S. v. Grant*, 636 F.3d 803, 816 (6th Cir. 2011). It is respectfully submitted that for the reasons set forth in Mr. Russo's Sentencing Memorandum and herein, Mr. Russo is deserving of a six-level substantial assistance reduction in this matter.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 18, 2019, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular US mail. Parties may access this filing through the Court's system.

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